U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF G-T-C-

DATE: AUG. 7, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a strategic port planner, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Acting Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had not established that he is coming to the United States to continue work in the area of expertise and had not shown that he met any of the ten initial evidentiary criteria, of which he must meet at least three. The Petitioner then filed a motion to reopen and reconsider which the Acting Director denied.

On appeal, the Petitioner submits additional evidence and contends that the record shows his continuing intent to work in the area of expertise and establishes that he qualifies as an individual of extraordinary ability.[1]

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

> (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
>
> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

[1] We decline the Petitioner's request for oral argument. 8 C.F.R. § 103.3(b).

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth two options for satisfying this classification's initial evidence requirements. First, a petitioner can demonstrate a one-time achievement (that is a major, internationally recognized award). Alternatively, he or she must provide documentation that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, memberships, and published material in certain media).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The record reflects that the Petitioner is a strategic port planner with more than 25 years of experience in maritime and civil infrastructure development. The Acting Director concluded that the Petitioner had not shown clear evidence that he is coming to the U.S. to continue working in the area of expertise. Next, she held that the Petitioner had not satisfied at least three of the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) to warrant a final merits determination.

After reviewing the record in its entirety, we find that the Petitioner has sufficiently demonstrated his intent to continue his work in the area of expertise, but he has not established that he meets at least three of the regulatory criteria, as required.

A. Continuous Work in the Area of Extraordinary Ability

The Acting Director held in the initial decision and on motion that the Petitioner had not submitted clear evidence that he is coming to the United States to continue work in the area of expertise. Section 203(b)(1)(A) of the Act states that the petitioner must show that he seeks to enter the United States "to continue work in the area of extraordinary ability." The regulation at 8 C.F.R. § 204.5(h)(5) states that such evidence may include a statement "detailing plans on how he or she intends to continue his or her work in the United States."

In response to the Acting Director's request for evidence (RFE), the Petitioner submitted a statement regarding the need the United States has for specialist port planners. He states that his services have been in high demand in the country, and in his second statement submitted on appeal, he provides additional background information regarding the growth of his company, noting that over the last five years, he has "built a company that . . . has managed to position itself as a leading provider of highly specialized consulting services to the ports, maritime and shipping industries around the world." He adds that his goal "has been to take [his company's] success, built initially in Australia before spreading out into Europe, to the United States and to assist the country and its industry to achieve its requirements in an ever-changing world." He notes that he "spent a great of time planning this," seeing "a clear and present market capacity gap in the U.S." The Petitioner indicates that his first major U.S. based project "was one of the largest port planning exercises to be undertaken in the U.S., the long-term planning of the Ports of New York and New Jersey," noting that his accomplishments there led him to secure three other projects which are "three of the largest private investment transactions in U.S. ports and related infrastructure." We find that this evidence sufficiently demonstrates that the Petitioner intends to continue his work in the area of expertise to meet the requirements of section 203(b)(1)(A) of the Act.

B. Evidentiary Criteria

As the Petitioner has not established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Acting Director found that the Petitioner did not meet any of these criteria. Here, we find that the Petitioner has established that he meets the criteria for leading or critical role under 8 C.F.R. § 204.5(h)(3)(viii) and high salary at 8 C.F.R. § 204.5(h)(3)(ix). However, the evidence in the record does not demonstrate that he meets the criteria for membership, published material, or contributions of major significance under 8 C.F.R. § 204.5(h)(3)(ii), (iii), and (v), respectively.[2]

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. 8 C.F.R. § 204.5(h)(3)(ii).*

The Petitioner asserts that he meets the requirements of this criterion through his membership in the World Association for Waterborne Transport Infrastructure (PIANC)[3] and his position on the board of the [redacted]. In the initial decision, the Acting Director held that while the Petitioner had established evidence of his membership in the PIANC, he had not shown that PIANC requires outstanding achievements of its members as judged by recognized national or international experts in their disciplines or fields. Then, on motion, she held that the email chain

[2] On appeal, the Petitioner contends that the Director erred in conducting the two-part review set out in *Kazarian*. He states that under the approach in *Buletini v. INS*, 860 F. Supp. 1222, 1234 (E.D. Mich. 1994), once three of the regulatory requirements are met, he has met *prima facie* eligibility and the burden of proof shifts to USCIS to demonstrate by "specific and substantiated evidence" why the petitioner is not qualified. Here, we need not address this claim because the Petitioner has not established that he meets three criteria under 8 C.F.R. § 204.5(h)(3)(i)-(x).

[3] The PIANC was originally known as the Permanent International Association of Navigation Congresses.

showing his acceptance of the board position for the [redacted] did not equate to primary evidence of his membership. She also held that he had not otherwise shown that board membership required outstanding achievements of its members as judged by recognized national or international experts.

On appeal, the Petitioner contends that he meets this criterion through the documentation in the record regarding the distinguished background of the [redacted] board members and the secondary evidence he submitted regarding his [redacted] membership, including his explanation for not being able to obtain primary evidence. The Petitioner states that because the Acting Director did not discuss membership in the [redacted] in the initial decision and only focused on the PIANC, he understood that it had been established that he met this requirement pertaining to the [redacted] On motion, however, the Acting Director held that the Petitioner had not met this criterion through his membership in the [redacted] The Petitioner has not submitted any new evidence related to his memberships, asserting that the documentation demonstrates that board membership on the [redacted] required outstanding achievements of its members as judged by national or international experts.

We find that the Petitioner has not met his burden of proof in establishing that he meets this criterion. The record contains an email chain between the Petitioner and [redacted] regarding the Petitioner's acceptance of a position on the [redacted] board, but the record does not demonstrate what criteria was used in extending the invitation to the Petitioner. The record contains an [redacted] report from October 2016 stating that "[redacted] represents the major Australian logistics supply chain customers, providers, infrastructure owners and suppliers," adding that its members "span the entire supply chain, incorporating road, rail, sea, air, maritime and intermodal ports." However, the Petitioner has not provided evidence demonstrating that membership on the board for the [redacted] requires outstanding achievements of its members as determined by national or international experts in the field.

We note that in the RFE response the Petitioner identified certain individuals on the board for the [redacted] along with their titles, contending that "only someone on par with the level of expertise and significant achievements as other board members would be asked to join the board." The Petitioner states that he met these "high qualifications of the board membership," noting that this is the reason he was invited to join the board. The Petitioner has not submitted evidence corroborating his claims regarding the qualifications of the other members of the board at [redacted] or their outstanding achievements, and his unsupported statements are insufficient to establish eligibility. Here, we note that even though the Petitioner has identified members of the board and their job titles, a comparison alone to the other members of the board is insufficient to meet this criterion. While the individual members of the board may be highly qualified, the record does not demonstrate that [redacted] requires outstanding achievements, as judged by recognized national or international experts, to be appointed to its board. For example, the Petitioner did not submit evidence of the organization's criteria for board membership or its selection process, or documentation establishing the expertise and recognition of those individuals judging him for admission.

Similarly, the Petitioner has also not established that his membership in PIANC meets the requirements of this criterion. The PIANC website states that it is "the global non-political and non-profit organisation providing guidance for sustainable waterborne transport infrastructure for ports and waterways," noting that "[m]embers include governments and public authorities, corporations and

interested individuals." This webpage further states, "PIANC Australia is one of the larger of the 25 recognised national sections within PIANC internationally" with a "growing membership which currently comprises about 41 corporate members and 84 individual members." While the record contains an invoice submitted to the Petitioner from PIANC Australia, Inc., for the 2016 membership fees to establish his membership in this organization, the Petitioner has not provided additional documentation showing that this organization requires outstanding achievements of its members as judged by national or international experts for membership. Therefore, the Petitioner has not established that he meets this criterion.

> Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii).

The Acting Director held that the publications in the record only quoted the Petitioner and do not constitute published material about him to meet the requirements of this criterion. On appeal, the Petitioner references articles published in the World Maritime News, Port Finance International, the Ports Australia Newsletter, and on voakl.net. Three of the four articles do not satisfy the requirements of the criterion as they do not identify the author. The article appearing on voakl.net, a blog dedicated to issues related to southern Auckland, does identify its author, but the record does not establish that the blog constitutes a professional or major trade publication or other major media. Furthermore, we note that none of the articles are about the Petitioner; one only briefly mentions his consultancy, while the others focus on projects and contain only a brief quote from him. Articles that are not about the Petitioner do not establish eligibility for this criterion. See, e.g., Negro-Plumpe v. Okin, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor). Therefore, the Petitioner has not established that he meets this criterion.

> Evidence of the individual's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v)

This regulatory criterion contains multiple evidentiary elements that the Petitioner must satisfy. He must demonstrate that his contributions are original and scientific, scholarly, artistic, athletic, or business-related in nature. The contributions must have already been realized, rather than being prospective possibilities. He must also establish that the contributions rise to the level of major significance in the field as a whole, rather than to a project or to an organization. The phrase "major significance" is not superfluous and thus has meaning. See Matter of Masri, 22 I&N Dec. 1145, 1148 (BIA 1999). "Contributions of major significance" connotes that the petitioner's work has significantly impacted the field. See Visinscaia, 4 F. Supp. 3d at 134. The Acting Director found that the evidence in the record did not support this criterion because the letters in the record from a former colleague and employers demonstrated that his work was highly regarded, but this evidence did not establish how it had significantly contributed to the greater field, beyond them and their customers.

On appeal, the Petitioner has not submitted any new evidence, contending that the previously submitted documentation establishes his eligibility. He relies on seven letters from individuals in the same field, asserting that they are experts in the field and that the Acting Director erred in not

considering all of them. While these letters attest to his expertise as a port planner, the record does not contain sufficient evidence to demonstrate how his original contributions have impacted the field at large. Several of the letters focus on the Petitioner's consulting work related to the [redacted] deputy director of [redacted], states in his letter, "the Long range Masterplan is one of the most important port planning exercises undertaken by [redacted] which "will effectively guide the development in our port and terminal planning to meet the future maritime trade needs of New York and New Jersey region over the next 30+ years." [redacted] identifies the Petitioner's contributions as a sub-consultant to [redacted] the engineering consulting firm awarded the project, stating that "[the Petitioner] was instrumental in the delivery of future fleet forecasting, future-state thinking, multi-terminal capacity analysis and the development of the various port plan options." He does not, however, describe how the Petitioner's individual contributions to the [redacted] project bid were of major significance to the field.[4]

Similarly, in a letter from [redacted] the chief operating officer of the [redacted] in Australia, he states that he directed the Petitioner to provide consulting to the Port of [redacted] noting that this is "one of the largest import focused ports in the southern hemisphere." [redacted] indicates that the Petitioner "has been delivering all of [redacted] major port planning which includes commissioning him on several large transformational projects for [redacted]." He then adds, "[t]here is no question that [the Petitioner's] ability and expertise is incredibly rare, not just in the maritime industry, but also in the wider engineering industry." The letter does not identify what specific original contributions the Petitioner made in providing consulting work for the Port of [redacted] or for [redacted] or how it impacted the field.

[redacted] principal consultant and senior [redacted] project representative at [redacted] an engineering consulting firm states that the [redacted] plan is a "high profile project" that is "one of the largest planning projects to ever be undertaken by [redacted]." She states that although [redacted] is "one of the world's leading engineering consultancies, including significant market share of maritime and port engineering," she notes that "the company does not maintain senior port planning skills," relying instead on "specialist sub-consultants to deliver projects like these." [redacted] indicates, "[the Petitioner] was very impressive to the [redacted] when we bid for the project, due to his clear understanding of the global port planning industry and his track record in delivering strategic port plans around the world." She then asserts that "[t]he reality is that we would not have won the project without his primary involvement." While the letter describes the effect the Petitioner's work had on [redacted] it does not establish how his work on the [redacted] project bid represents an original contribution of major significance.

[redacted] further expands upon the Petitioner's role by stating, "[h]aving then won the project alongside [the Petitioner's] company, he has been instrumental in enabling us to deliver a plan to [redacted] that is both innovative and defendable." She notes that the Petitioner "delivered all [the company's] highly specialist port planning work including advanced maritime shipping fleet forecasting, trade analysis, terminal capacity modelling and analysis, development option planning and future state analysis." She indicates, "[t]his sort of service is well beyond typical engineering consultancy services and is pure specialist work." The record does not contain sufficient evidence

[4] We note that [redacted] also indicates that the development of the master plan is ongoing and not expected to conclude until May or June of 2018.

demonstrating how his work as a consultant to [redacted] for the [redacted] project has amounted to a contribution of major significance, apart from the benefit this provided to [redacted] in its role on the project. "Contributions of major significance" means that the petitioner's work has significantly impacted the field. *See Visinscaia,* 4 F. Supp. 3d at 134.

Similarly, in a letter from [redacted] senior partner and leader of the transaction advisory services at [redacted] in New Zealand, he states that the company has "again teamed with [the Petitioner] as part of a multidisciplinary team to develop a long range port planning study for the [redacted], the largest port on the east coast of the U.S." He also indicates that the Petitioner "led [redacted]s delivery of the [redacted] Study, which is one of the highest profile infrastructure planning assessments being undertaken in New Zealand." This demonstrates that the Petitioner has led high profile infrastructure planning, but the record does not contain evidence demonstrating specifically what his original contributions are and how they amount to contributions of major significance.

The record contains two letters from [redacted] the director of [redacted] He states in his first letter that the Petitioner has been described by clients and colleagues as a "brilliant engineer," and that he "planned, designed, and managed the delivery of major civil engineering projects for [redacted] like the conceptual ground works for the [redacted] and the civil works for the [redacted] hotel in [redacted] Georgia." He adds that the Petitioner has delivered maritime projects "including the planning and design of [the] [redacted] marina," which he states, "when complete, will be one of the largest marinas in Europe." While these are again indicative of high profile projects, the record does not contain supporting documentation to establish specifically what the Petitioner's contributions were and how they represent contributions of major significance in the field. While the [redacted] marina and the [redacted] projects appear to still be in progress, it has not been shown how his contributions have already amounted to contributions of major significance in the field. For the projects that have been completed, the record does not contain sufficient evidence demonstrating what his original contributions were and how they have constituted contributions of major significance in the field.

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii).

For a leading role, the evidence must establish that the petitioner is or was a leader.[5] If a critical role, the evidence must establish that the petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. A supporting role may be considered "critical" if the petitioner's performance in the role is or was important in that way. It is not the title of the petitioner's role, but rather his performance in the role that determines whether the role is or was critical.[6]

[5] *See* USCIS Policy Memorandum PM-602-0005.1, Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 10 (Dec. 22, 2010), https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/i-140-evidence-pm-6002-005-1.pdf.
[6] *Id.*

The Acting Director held that the letters discussing the Petitioner's role in the [redacted] project did not establish how his role was leading or critical for [redacted]. On appeal, the Petitioner highlights his role with [redacted] and asserts that this establishes his leading role. [redacted], the practice leader-maritime at [redacted] states in his letter that he followed the Petitioner to the company, noting that the Petitioner received the "prestigious role of Global Practice Leader for Maritime." [redacted] states that while "[the Petitioner's] role in [redacted] was a highly prestigious position in the maritime industry," his role as global director for [redacted] "is one of the pinnacle positions in the global maritime practice." He states that in this role, the Petitioner "was tasked with building a new maritime practice in Australia and South Asia as well as developing [redacted]'s global maritime practice." The record contains articles about the firm establishing it has a distinguished reputation. This evidence demonstrates that the Petitioner satisfies the regulatory criterion.

> *Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.* 8 C.F.R. § 204.5(h)(3)(ix).

The Acting Director held that the evidence in the record did not show that the Petitioner has commanded a high salary in relation to others in the field. On appeal, the Petitioner submits additional documentation showing an offer of employment with [redacted] in 2013, stating a salary of $252,000 and a $48,000 bonus. The record also contains a monthly base income pay statement from [redacted] stating year-to-date income of $146,584, which the record reflects represents income for approximately half of the fiscal year. Documentation from the bls.gov website indicates that the top ten percent of wages for civil engineers in the United States was $132,880 as of May 2016. The record also contains documentation from the Professional Engineers Employment and Remuneration Report for 2017 regarding salaries for engineers in Australia, demonstrating that the Petitioner's income is much higher than the upper quartile of the highest wage levels listed. The record contains an offer of employment with [redacted] stating his salary as $249,840 (from July 1, 2013 to March 31, 2014), invoices from consultancy work that the Petitioner performed, and documentation from his personal bank account. This evidence sufficiently establishes that the Petitioner meets this criterion.

III. CONCLUSION

The Petitioner has shown that that he intends to continue working in his area of expertise, but he has not established that he meets at least three of the evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the initial evidentiary requirements as an individual of extraordinary ability.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of G-T-C-*, ID# 1883233 (AAO Aug. 7, 2019)